

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TRC TIRE SALES, LLC,  
Plaintiff,

v.

EXTREME TIRE & SERVICE, INC.,  
Defendant.

No. CV-08-015-FVS

ORDER DENYING MOTION TO  
DISMISS

**THIS MATTER** came before the Court based upon the defendant's motion to dismiss for lack of personal jurisdiction. The defendant was represented by Geana M. Van Dessel; the plaintiff by Michael R. Tucker.

**SUMMARY**

TRC Tire Sales, LLC, ("TRC Tire") is organized under the law of the State of Washington. Its principal place of business is Spokane, Washington. Extreme Tire & Service, Inc., ("Extreme Tire") is organized under the law of the State of Louisiana. Its principal place of business is Mandeville, Louisiana. TRC Tire purchased two used, commercial tires from Extreme Tire for the sum of one-hundred thirty thousand dollars. Afterward, TRC Tire allegedly learned the tires have defects which render them commercially worthless. TRC Tire filed an action against Extreme Tire in Spokane County (Washington) Superior Court seeking relief under both contract and tort law. Extreme Tire removed the action to federal court, 28

1 U.S.C. § 1446, based upon diversity of citizenship, 28 U.S.C. §§  
2 1441(b), 1332(a)(1). Now, Extreme Tire moves to dismiss on the ground  
3 it is not subject to personal jurisdiction in this forum.  
4 Fed.R.Civ.P. 12(b)(2). On July 11, 2008, the Court tentatively  
5 decided to deny Extreme Tire's motion. The parties discussed the  
6 Court's tentative conclusion during oral argument on July 23rd. For  
7 the reasons set forth below, the Court adheres to its original  
8 conclusion.

#### 9 **BACKGROUND**

10 The story begins late in 2006. At the time, the tires at issue  
11 in this case were owned by a third party and located in Phoenix,  
12 Arizona. The third party wanted to sell the tires. The owner of  
13 Extreme Tire, Ronnie Rachal, hoped to broker a sale. To that end, he  
14 listed the tires upon his company's website and sent a mass email to  
15 tire dealers around the United States, including at least one, and  
16 perhaps as many as six, in Washington.

17 Thomas Servine, one of TRC Tire's co-owners, learned about the  
18 tires from another Washington tire dealer. He telephoned Mr. Rachal  
19 on July 24, 2007. Mr. Servine alleges that Mr. Rachal told him the  
20 tires were "clean"; that is to say, they did not have any repairs and  
21 did not need any. Mr. Servine decided to purchase the tires. The  
22 terms of the purchase were finalized via telephone and email.

23 As explained above, the tires were owned by a third party and  
24 located in Phoenix. Extreme Tire bought the tires from the third  
25 party and sold them to TRC Tire. Rick Pettit, TRC Tire's other co-  
26 owner, flew to Phoenix on or about July 25th and arranged for the  
tires to be trucked to the company's storage facility, which is  
located in the State of Idaho. There was some confusion with respect

1 to the purchase price. Mr. Servine called Mr. Rachal and discussed  
2 the matter. Ultimately, he agreed to pay \$130,000 for the tires. TRC  
3 Tire wired payment to Extreme Tire.

4 TRC Tire planned to sell the tires to a dealer in the State of  
5 North Dakota. The North Dakota dealer asked TRC Tire to ship the  
6 tires to an expert in the State of Montana for inspection. The expert  
7 determined that the tires needed repair. As a result, the North  
8 Dakota dealer refused to accept the tires. TRC Tire arranged for  
9 another expert in Montana to examine the tires. He discovered damage  
10 that the first expert missed. In the opinion of the second expert,  
11 the tires have no commercial value.

12 After receiving the second expert's report, Mr. Servine attempted  
13 to communicate with Mr. Rachal by telephone and by email. Mr. Servine  
14 alleges he sent numerous messages indicating that TRC Tire refuses to  
15 accept the tires on the ground they are nonconforming goods.  
16 According to Mr. Servine, Mr. Rachal has not responded to any of the  
17 messages. Consequently, TRC Tire filed the instant action.

#### 18 **RULING**

19 A nonresident corporation submits itself to the jurisdiction of  
20 the courts of the State of Washington with respect to any cause of  
21 action that arises out of business which the corporation transacts in  
22 this state. RCW 4.28.185(1)(a). The jurisdiction conferred by RCW  
23 4.28.185(1)(a) -- *i.e.*, specific jurisdiction -- extends to the limit  
24 imposed by the due process clause. *Omeluk v. Langsten Slip &*  
25 *Batbyggeri A/S*, 52 F.3d 267, 269 (9th Cir.1995). The Ninth Circuit  
26 has reduced the requirements of due process to a three-prong test:

(1) The non-resident defendant must purposefully direct his  
activities or consummate some transaction with the forum or

1 resident thereof; or perform some act by which he  
2 purposefully avails himself of the privilege of conducting  
3 activities in the forum, thereby invoking the benefits and  
4 protections of its laws;

(2) the claim must be one which arises out of or relates to  
the defendant's forum-related activities; and

(3) the exercise of jurisdiction must comport with fair play  
5 and substantial justice, i.e. it must be reasonable.

6 *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d  
7 1199, 1205-06 (9th Cir.2006) (en banc) (citations omitted)  
8 (hereinafter "*Yahoo!*").

9 The Ninth Circuit often refers to the first prong of the test as  
10 the "purposeful-availment" prong. *Schwarzenegger v. Fred Martin Motor*  
11 *Co.*, 374 F.3d 797, 802 (9th Cir.2004). The term "purposeful  
12 availment" is more complex than it may appear at first blush. It  
13 includes two related, but analytically distinct, concepts; namely,  
14 purposeful availment and purposeful direction. *Id.* The term  
15 purposeful availment is closely associated with contract cases. *Id.*  
16 When considering specific jurisdiction in the context of a pure  
17 contract case, the Ninth Circuit typically asks whether the non-  
18 resident defendant has purposefully availed himself of the privilege  
19 of conducting activities or consummating a transaction in the forum,  
20 "focusing on activities such as delivering goods or executing a  
21 contract." *Yahoo!*, 433 F.3d at 1206 (internal punctuation,  
22 alterations, and citations omitted). By way of contrast, the term  
23 "purposeful direction" is closely associated with tort cases.  
24 *Schwarzenegger*, 374 F.3d at 802. When considering specific  
25 jurisdiction in the context of a pure tort case, the Ninth Circuit  
26 typically inquires whether the non-resident defendant has purposefully  
directed "activities at the forum state, applying an 'effects' test

1 that focuses on the forum in which the defendant's actions were felt,  
2 whether or not the actions themselves occurred within the forum."  
3 *Yahoo!*, 433 F.3d at 1206 (internal punctuation, alterations, and  
4 citations omitted).

5 The "effects" test is drawn from *Calder v. Jones*, 465 U.S. 783,  
6 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984). As interpreted by the Ninth  
7 Circuit, *Calder* stands for the proposition that the purposeful-  
8 availment prong "is satisfied even by a defendant whose only contact  
9 with the forum state is the purposeful direction of a foreign act  
10 having effect in the forum state." *Dole Food Co., Inc. v. Watts*, 303  
11 F.3d 1104, 1111 (9th Cir.2002 (internal punctuation and citations  
12 omitted). However, the *Calder* "effects" test is subject to a  
13 significant limitation. It "applies only to intentional torts, not to  
14 . . . breach of contract and negligence claims[.]" *Holland America*  
15 *Line Inc. v. Wartsila North America, Inc.*, 485 F.3d 450, 460 (9th  
16 Cir.2007).

17 One of the issues raised by Extreme Tire at oral argument is  
18 whether this case should be classified as a "contract" case or a  
19 "tort" case. That is to say, should the Court engage in purposeful-  
20 availment analysis (closely associated with contract cases) or  
21 purposeful-direction analysis (closely associated with tort cases)?  
22 Extreme Tire points out that TRC Tire's claims are rooted in the sale  
23 of two expensive, commercial tires. Given the origin of TRC Tire's  
24 claims, says Extreme Tire, the Court should view this case as a  
25 "contract" case rather than a "tort" case even though TRC Tire has  
26 pleaded both tort and contract claims. As partial authority for this  
argument, Extreme Tire has cited three cases in which the Ninth  
Circuit employed purposeful-availment (*i.e.*, contract) analysis. The

1 three cases are *Roth v. Garcia Marquez*, 942 F.2d 617 (9th Cir.1991);  
2 *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802 (9th Cir.1988); and *T.M.*  
3 *Hylwa, M.D., Inc. v. Palka*, 823 F.2d 310 (9th Cir.1987).

4 If Extreme Tire is correct, one would expect to find that, in  
5 each of the three preceding cases, the Ninth Circuit employed  
6 purposeful-availment analysis despite the fact that the plaintiff  
7 pleaded both contract and intentional tort claims. Is that what  
8 occurred? In *T.M. Hylwa*, the plaintiff "sued Palka . . . pursuant to  
9 the Employees Retirement Income Security Act . . . , and the Federal  
10 Declaratory Judgment Act . . . seeking a declaratory judgment  
11 establishing the amount of benefits owed Palka under Hylwa's various  
12 pension plans." 823 F.2d at 312. While "Hylwa also asserted pendent  
13 state claims against Palka for negligence, breach of contract, and  
14 money had and received[,]" *id.*, there is no indication that Hylwa  
15 pleaded an intentional tort. See *id.* In *McGlinchy*, the plaintiffs  
16 filed both contract and tort claims. 845 F.2d at 815. Nevertheless,  
17 they relied upon "a contract claim, not [upon] a tort claim," in order  
18 to establish personal jurisdiction. *Id.* at 817.<sup>1</sup> Finally, in *Roth*,  
19 the plaintiff filed a complaint "seeking declaratory relief to  
20 determine the status of his rights to produce [a] film." 942 F.2d at  
21 620. He did not assert a tort claim.

22 The preceding cases are readily distinguishable from this one.

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23 <sup>1</sup>Five years after deciding *McGlinchy*, the Ninth Circuit  
24 explained, "[I]n *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802,  
25 817 (9th Cir.1988), we refused to apply the *Calder* effects test  
26 when the underlying action involved a contract dispute, not a  
tort." *CoreVent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1486  
(9th Cir.1993).

1 In none of them did the plaintiff rely upon an intentional tort to  
2 establish specific jurisdiction. Here, by contrast, TRC Tire alleges  
3 that Mr. Rachal made intentionally false statements to a person who  
4 was located in the State of Washington. It is true, as Extreme Tire  
5 argues, that TRC Tire's intentional tort claims are only part of its  
6 complaint. However, the Ninth Circuit has never held that the *Calder*  
7 effects test is applicable only when intentional tort claims are the  
8 core of the plaintiff's case. To the contrary, in *Yahoo!*, the en banc  
9 Court invoked the effects test in a case that did not involve any tort  
10 claims -- or contract claims, for that matter. 433 F.3d at 1206  
11 ("this case is neither a tort nor a contract case"). The en banc  
12 Court did not seem bothered by the absence of tort claims. Instead,  
13 it focused upon whether the plaintiff had satisfied the elements of  
14 the effects test. See *id.* at 1208-11. So, too, here. TRC Tire has  
15 alleged facts that implicate the test. Thus, the issue is whether TRC  
16 Tire has carried its burden.

#### 17 A. Purposeful Direction

18 The first prong of the Ninth Circuit's three-prong, specific  
19 jurisdiction-jurisdiction test is purposeful direction. TRC Tire may  
20 satisfy this prong by establishing that Extreme Tire "committed an  
21 intentional act, expressly aimed at the forum state, causing harm that  
22 the defendant knows is likely to be suffered in the forum state."  
23 *Yahoo!*, 433 F.3d at 1206 (internal punctuation and citations omitted).

##### 24 *1. Intentional act*

25 TRC Tire must show that Extreme Tire's jurisdictionally-relevant  
26 acts were intentional. *Id.* at 1209. Mr. Rachal does not dispute that  
he sent an email to dealers in the State of Washington advertising the  
tires, and that he spoke by telephone with both Mr. Servine and Mr.

1 Pettit. These are intentional acts.

2 2. *Express aiming*

3 An act is expressly aimed at the forum if it has or will have a  
4 significant impact upon the plaintiff in that state. *Id.* An  
5 expressly-aimed act need not be wrongful, although some are. *Id.* at  
6 1207-08. The following are examples of expressly-aimed acts:

7 In *Brainerd v. Governors of the Univ. of Alberta*, 873 F.2d 1257,  
8 1258 (9th Cir.1989), an administrator at the University of Arizona  
9 allegedly called an administrator at the University of Alberta and  
10 inquired about a professor who was then employed by the University of  
11 Arizona but who formerly had been employed by the University of  
12 Alberta. The Canadian administrator allegedly made disparaging  
13 remarks about the Arizona professor. *Id.* The Arizona professor filed  
14 an action in the State of Arizona alleging that the comments violated  
15 an agreement he had with the University of Alberta and, in addition,  
16 tortiously undermined his employment with the University of Arizona.  
17 *Id.* The Ninth Circuit held that the Canadian administrator was  
18 subject to specific jurisdiction in Arizona. *Id.* at 1259-60. Since  
19 deciding *Brainerd*, the Ninth Circuit has cited the Canadian  
20 administrator's comments as an instance of express aiming. *See, e.g.,*  
21 *Bancroft & Master, Inc. v. August Nat'l Inc.*, 223 F.3d 1082, 1087-88  
22 (9th Cir.2000). Even though he did not initiate the calls, the  
23 statements that he allegedly made "during the conversations were not  
24 'untargeted negligence' but rather were 'performed for the very  
25 purpose of having their consequences felt in the forum state.'" *Id.*  
26 (quoting *Brainerd*, 873 F.2d at 1260).

In *Bancroft & Master*, a Georgia organization sent a letter to the  
Virginia headquarters of an organization that served as the registrar



1 of domain names. 223 F.3d at 1084-85. The Georgia organization  
2 complained to the registrar that a California corporation was using  
3 its domain name without authorization. *Id.* at 1085. The California  
4 corporation filed an action in California. *Id.* The Ninth Circuit  
5 held that the Georgia organization's complaint was expressly aimed at  
6 the forum state. Despite the fact that the Georgia organization  
7 mailed its letter to Virginia, not California, the Georgia  
8 organization allegedly knew its letter would trigger the registrar's  
9 dispute-resolution procedures, forcing the California corporation to  
10 defend its right to use a domain name. *Id.* at 1087-88.

11 In *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1318-19 (9th  
12 Cir.1998), an Illinois resident sent a letter to the corporate office  
13 of a California corporation demanding payment for a domain name that  
14 he had hijacked. The corporation filed an action in California. *Id.*  
15 at 1319. The Ninth Circuit held that the Illinois resident was  
16 subject to specific jurisdiction in California. *Id.* at 1322-23.  
17 Since deciding *Panavision*, the Ninth Circuit has cited the Illinois  
18 resident's demand letter as an instance of express aiming. *Rio*  
19 *Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1020 (9th  
20 Cir.2000).

21 In *Rio Properties*, a Costa Rican company ran radio and print  
22 advertisements in the State of Nevada offering gamblers an opportunity  
23 to wager on sporting events. 284 F.3d at 1012-13. A Nevada  
24 corporation filed suit in Nevada alleging that the Costa Rican company  
25 was doing business under a name that infringed its trademark. *Id.*  
26 The Ninth Circuit held that the Costa Rican company's advertisements  
were expressly aimed at the forum state because the ads allegedly were  
part of a marketing campaign which was designed to obtain customers in

1 Nevada. See *id.* at 1020.

2 In *Dole*, a California corporation filed an action in the State of  
3 California against two former employees who were citizens of the  
4 United Kingdom and Germany, respectively, and who lived and worked in  
5 Europe. 303 F.3d at 1107. The corporation alleged that the  
6 defendants had made false statements to the corporation's managers in  
7 California. *Id.* at 1109-10. The Ninth Circuit held that the  
8 defendants expressly aimed their communications at California based  
9 upon evidence they knew that the corporation's "principal place of  
10 business was in California, knew that the decisionmakers for [the  
11 corporation] were located in California, and communicated directly  
12 with those California decisionmakers." *Id.* at 1112. At the same  
13 time, the Ninth Circuit recognized that not every foreign act with  
14 foreseeable effects in the forum state gives rise to specific  
15 jurisdiction. *Id.* (internal punctuation and citation omitted). The  
16 foreign act must have a significant impact. In *Dole*, that requirement  
17 was satisfied by evidence indicating that the defendants'  
18 communications were part of a scheme to induce the corporation's  
19 managers "to implement a new importing system, and, as a consequence,  
20 to enter into *significant and detrimental* contractual arrangements."  
*Id.* (emphasis added).

21 In *Yahoo! Inc.*, two French organizations obtained orders from a  
22 French court requiring a California internet service provider to  
23 prevent its customers in France from obtaining access to certain Nazi-  
24 related artifacts, texts, and websites. 433 F.3d at 1202-04. The  
25 internet service provider filed an action in California challenging  
26 the enforceability of the orders in the United States. *Id.* at 1204.  
The Ninth Circuit held that the orders were expressly aimed at

1 California because, in order to comply, the internet service provider  
2 had to modify its servers, which were located in the forum state. *Id.*  
3 at 1209.

4 With the preceding cases in mind, it is appropriate to turn to  
5 the facts of this one. Extreme Tire regularly sends email  
6 advertisements to a limited number of Washington tire dealers. The  
7 purpose of the advertisements is to solicit business. *Cf. Rio*  
8 *Properties*, 284 F.3d at 1020 (defendant conducted advertising campaign  
9 in forum state). Although TRC Tire did not receive an email  
10 advertisement concerning the tires, Mr. Servine learned about them  
11 from some other source. He initiated contact with Mr. Rachal. His  
12 call is precisely the sort of inquiry that Mr. Rachal hoped his  
13 advertisements would generate. Ultimately, Mr. Rachal discussed the  
14 tires with both Mr. Servine and Mr. Pettit.<sup>2</sup> He knew they were TRC  
15 Tire's decisionmakers, and that their company's office is located in  
16 Washington. He hoped to persuade them to purchase the tires. *Cf.*  
17 *Panavision*, 141 F.3d at 1322 (defendant sent a letter to the forum  
18 state seeking payment for the use of a domain name). Unlike the  
19 defendant in *Panavision*, he succeeded; and when he did, he arranged  
20 for TRC Tire to wire payment to Louisiana. In certain respects, his  
21 conduct is similar to that described in *Dole*. 303 F.3d at 1112  
22 (defendants allegedly misrepresented facts in order to manipulate the  
23 company's decision-making process). Without question, Mr. Rachal's  
24 alleged misrepresentations are far less elaborate than the ones

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25 <sup>2</sup>The fact that Mr. Pettit was in Phoenix when he spoke to  
26 Mr. Rachal does not preclude consideration of the call. *Cf.*  
*Bancroft & Master*, 223 F.3d at 1087-88 (letter mailed from  
Georgia to Virginia was expressly aimed at California).

1 alleged in *Dole*. Nevertheless, if TRC Tire's allegations are true,  
2 the company has sustained a serious financial loss as a result of Mr.  
3 Rachal's conduct; a loss which the company experienced in the forum  
4 state. *Dole*, 303 F.3d at 1113-14 (a corporation frequently suffers  
5 financial loss at its principal place of business). Given the  
6 significant impact that Mr. Rachal's jurisdictionally-relevant  
7 communications allegedly have had upon TRC Tire in the forum state,  
8 his communications constitute expressly aimed acts. *Yahoo! Inc.*, 433  
9 F.3d at 1209 (an act is expressly aimed at the forum if it has or will  
10 have a significant impact upon the plaintiff in that state).

### 11 3. *Causing harm*

12 TRC Tire has satisfied two of the three requirements necessary to  
13 establish purposeful direction. In order to satisfy the third  
14 requirement, TRC Tire must demonstrate that Extreme Tire caused harm  
15 that it knew was likely to be suffered in the forum state. 433 F.3d  
16 at 1206. It is true that TRC Tire did not intend to use or sell the  
17 tires in Washington. To the contrary, the company had tentatively  
18 arranged to sell them to a North Dakota tire dealer. The fact that  
19 some of the harm allegedly occurred in another state is relevant but  
20 not dispositive. *Id.* at 1207. It is enough that TRC Tire allegedly  
21 sustained a serious financial loss in Washington. Furthermore, Mr.  
22 Rachal arguably should have foreseen that the loss would be sustained  
23 here. He knew that Messrs. Servine and Profit were purchasing the  
24 tires on behalf of TRC Tire and that the company's office is located  
25 in Spokane.

### 26 B. Arising Out Of

TRC Tire has made a prima facie showing that Extreme Tire  
purposefully directed acts at this forum. By itself, however, TRC

1 Tire's showing is not enough to establish the existence of specific  
2 jurisdiction. TRC Tire also must demonstrate that its claims arise  
3 out of Extreme Tire's forum-related acts. *Yahoo! Inc.*, 433 F.3d at  
4 1206. The Ninth Circuit has adopted a "but for" test for determining  
5 whether a plaintiff's claims arise out of the defendant's forum-  
6 related acts. *Menken v. Emm*, 503 F.3d 1050, 1058 (9th Cir.2007). TRC  
7 Tire must show that it would not have suffered an injury "but for"  
8 Extreme Tire's forum-related acts. *Id.*

9 TRC Tire alleges that Mr. Rachal misrepresented the quality of  
10 the tires and that his alleged misrepresentations breached duties he  
11 owed under contract and tort law. Thus, his alleged forum-related  
12 communications are an essential part of TRC Tire's claims. That being  
13 the case, its claims arise out of his forum-related communications.  
14 See *Dole*, 303 F.3d at 1114 (plaintiff's claims arose out of  
15 defendant's forum-related contacts where their contacts were an  
16 essential part of the plaintiff's claims). Extreme Tire disagrees  
17 with this conclusion. As it points out, Mr. Rachal only had a few  
18 conversations with Mr. Servine concerning the tires. While Extreme  
19 Tire is correct, even a "'single forum state contact can support  
20 jurisdiction if the cause of action arises out of that particular  
21 purposeful contact of the defendant with the forum state.'" *Menken*,  
22 503 F.3d at 1060 (quoting *Yahoo! Inc.*, 433 F.3d at 1210). This is  
23 such a case. Consequently, the burden now shifts to Extreme tire to  
24 show that exercising jurisdiction would be unreasonable. *Id.*

#### 24 C. Reasonableness

25 Extreme Tire must present a compelling case that exercising  
26 jurisdiction would be unreasonable. *Menken*, 503 F.3d at 1061;  
*Bancroft & Master*, 223 F.3d at 1088. The Court must consider seven,

1 non-exhaustive factors in determining whether Extreme Tire has carried  
2 its burden. *Id.* at 1060. The first factor is "the extent of the  
3 defendant['s] purposeful interjection into the forum state's affairs."  
4 *Id.* Extreme Tire actively has solicited, and continues to solicit,  
5 business in the forum state. This factor weighs in favor of  
6 exercising jurisdiction in this forum. The second factor is "the  
7 burden on the defendant of defending in the forum." *Id.* Extreme Tire  
8 is a small company. It will be heavily burdened by having to defend  
9 itself in this forum. This factor weighs against exercising  
10 jurisdiction. The third factor is "the extent of conflict with the  
11 sovereignty of the defendant['s] state." *Id.* At oral argument,  
12 Extreme Tire insisted that this factor is relevant only when a foreign  
13 nation is involved. Extreme Tire did not cite any authority for this  
14 proposition, and it appears to be inconsistent with Ninth Circuit  
15 practice. *See, e.g., Menken*, 503 F.3d at 1060 (Nevada and Arizona);  
16 *CE Distrib., LLC v. New Sensor Corp.*, 380 F.3d 1107, 1112 (9th  
17 Cir.2004) (Arizona and New York); *Panavision*, 141 F.3d at 1323  
18 (California and Illinois). As a result, the Court adheres to its two-  
19 part conclusion that exercising jurisdiction over Extreme Tire will  
20 not infringe Louisiana's sovereignty and that this factor weighs in  
21 favor of exercising jurisdiction. The fourth factor is "the forum  
22 state's interest in adjudicating the dispute." *Id.* Washington has a  
23 strong interest in protecting its residents from misrepresentations in  
24 business transactions. This factor weighs in favor of exercising  
25 jurisdiction. The fifth factor is "the most efficient judicial  
26 resolution of the controversy." *Id.* Evidence could be located in a  
number of states, including Louisiana, Washington, Idaho, Montana, and  
perhaps Arizona. As between Louisiana and Washington, the latter is

1 probably somewhat more convenient. This factor tends to weigh in  
2 favor of exercising jurisdiction, but only slightly. The sixth factor  
3 is "the importance of the forum to the plaintiff's interest in  
4 convenient and effective relief." *Id.* At oral argument, TRC Tire  
5 asserted that it would be unable to obtain relief under Article 2 of  
6 the Uniform Commercial Code if it proceeds in Louisiana. However,  
7 since TRC Tire did not provide any support for its assertion, the  
8 Court adheres to its original conclusion that TRC Tire will be able to  
9 obtain adequate relief from Extreme Tire in Louisiana. This factor  
10 weighs against exercising jurisdiction. The seventh and final factor  
11 is "the existence of an alternative forum." *Id.* There is every  
12 indication that Louisiana is available as an alternative forum for  
13 resolution of the parties' dispute. This factor weighs against  
14 exercising jurisdiction. In sum, Extreme Tire has fallen short of  
15 establishing a compelling case against exercising jurisdiction.  
16 Factors 2, 6, and 7 weigh against. Factors 1, 3, and 4 weigh in  
17 favor. Factor 5 tips the balance slightly in favor. Where the  
18 factors are fairly evenly balanced, exercising jurisdiction is  
19 reasonable. *See Harris Rutsky & Co. Ins. Servs., Inc. v. Bell &*  
20 *Clements Ltd.*, 328 F.3d 1122, 1134 (9th Cir.2003) ("balance is  
21 essentially a wash"). *See also Menken*, 503 F.3d at 1061 (collecting  
cases).<sup>3</sup>

#### 22 D. Conclusion

23 As far as the Due Process Clause is concerned, the critical issue  
24 is whether Extreme Tire's contacts with Washington are such that the

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25 <sup>3</sup>In view of the Court's analysis of specific jurisdiction,  
26 the Court declines to determine whether general jurisdiction  
exists.

1 company should "`reasonably anticipate being haled into court" in this  
2 forum.'" *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 119,  
3 107 S.Ct. 1026, 1036, 94 L.Ed.2d 92 (1987) (quoting *World-Wide*  
4 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62  
5 L.Ed.2d 490 (1980)). A company that actively seeks to sell tires in  
6 Washington, and which, in the process of selling two tires, materially  
7 misrepresents their quality, should reasonably anticipate being forced  
8 to defend itself in this forum.<sup>4</sup>

9 **IT IS HEREBY ORDERED:**

10 Extreme Tire's motion to dismiss (**Ct. Rec. 5**) is denied.

11 **IT IS SO ORDERED.** The District Court Executive is hereby  
12 directed to enter this order and furnish copies to counsel.

13 **DATED** this 6th day of August, 2008.

14 s/ Fred Van Sickle  
15 Fred Van Sickle  
16 Senior United States District Judge  
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23 <sup>4</sup>TRC Tire has made a prima facie showing that exercising  
24 personal jurisdiction over Extreme Tire is consistent with the  
25 due process clause. That is not necessarily the end of the  
26 matter, however. At trial, TRC Tire must prove personal  
jurisdiction by a preponderance of the evidence. *Metropolitan*  
*Life Ins. Co. v. Neaves*, 912 F.2d 1062, 1064 n.1 (9th Cir.1990).